

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10848 of 2001

WITH

CIVIL APPLICATION No 4696 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
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GUJARAT ELECTRICITY BOARD

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner No. 1
MR PREMAL JOSHI, AGP.for Respondent Nos. 1-4
MR AS VAKIL for Respondent No. 5
RULE SERVED for Respondent No. 6

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 26/07/2002

ORAL JUDGEMENT

1 This is a petition filed by Gujarat Electricity

Board challenging the order dated 24.11.2000 passed by the Joint Secretary, Energy and Petrochemical Department, State of Gujarat under Section 36(2) of the Indian Electricity Act, 1910, whereby the order passed by the Electrical Inspector, Nadiad under Section 26(6) of the Act came to be confirmed.

2 On 20/3/2002 Rule was issued by this Court and the following order by way of interim relief came to be passed by this Court (Coram : Mr.Justice D.H.Waghela).

"1.RULE. Learned Assistant Government Pleader

Mr.Premal Joshi waives service of Rule for respondent Nos. 1 to 4 and learned Counsel Mr.A.S.Vakil waives service of Rule for respondent No.5. Interim relief granted earlier is ordered to continue on the statement made by learned counsel Mr.Majmudar on behalf of the petitioner that, in case any money is found to be due and payable to the respondent No.5 in relation to the matter in issue in this case, the same shall be paid to that respondent with interest at the commercial rate. The matter is ordered to be listed for final hearing on 23.4.2002. The parties shall have the liberty to apply for modification of the interim relief in case the final hearing does not take place on that date".

3 Thereafter, on behalf of the respondent Civil Application No. 4696 of 2002 came to be moved seeking modification of interim relief granted because the final hearing could not take place on 23.4.2002 as directed by this Court.

4 Today by consent of both the sides the matter was taken up for final hearing.

5 Heard Mr.N.K.Majmudar with Mr.Gaurang Patel for the petitioner and Mr.A.S.Vakil for respondent no.5. Mr.Premal Joshi, learned A.G.P. appears for respondent nos. 1 to 4.

6. On 18.3.1995 checking squad of the petitioner Board found that the meter installed at the premises of respondent no.5 was running slow by 7.66% and hence, supplementary bill for the amount of Rs.86,173.45 came to be issued. Respondent No.5, therefore, availed of statutory remedy of getting the dispute resolved before the Electrical Inspector, Nadiad and on 5/4/1995 Electrical Inspector, Nadiad, found that the meter was

running slow by 16.01%. As respondent no.5 was not satisfied with the aforesaid report it made a request to the Electrical Inspector to get the meter checked by Engineering Research Development Authority Laboratory (ERDA), Baroda. Accordingly, Electrical Inspector, Nadiad, accepted this request of respondent no.5 but the petitioner raised objection by letter dated 30.6.1995 before the Commissioner of Electricity, Gandhinagar and hence the office of the Electrical Inspector forwarded all the relevant papers to the Commissioner of Electricity, Gandhinagar. The said authority viz. Commissioner of Electricity, Gandhinagar on 17.11.1995 upheld the action of Electrical Inspector to forward meter to ERDA. It appears that in the meanwhile on 15/6/1995 ERDA opined after carrying out various tests that the meter was running slow by 16.79% and 15.09% depending upon the load.

7 Thereafter, on 26.2.1996 the Electrical Inspector, Nadiad passed an order stating that the meter was running slow by 4.53% only and respondent no.5 should be billed accordingly. It is pertinent to note that before passing the aforesaid order the Electrical Inspector, Nadiad, heard the representative of the petitioner Board as well as respondent no.5 and also took into consideration the written submissions made by both the parties and the various data produced before him. Being aggrieved by the aforesaid order of 26.2.1996, the petitioner Board went in appeal before the appellate authority as provided under Section 36(6) of the Act. The said authority after hearing both the sides declined to interfere with the order dated 26.2.1996 of the Electrical Inspector, as according to the appellate authority, the Electrical Inspector had taken into consideration all relevant facts including the opinion of ERDA and the report dated 26.2.1996 of the Electrical Inspector, Nadiad was found to be correct and just.

8. Mr.Gaurang Patel and Mr.N.K.Majmudar appearing on behalf of the petitioner Board submitted that the appellate authority has failed to take into consideration that the Electrical Inspector, Nadiad, had already rendered an opinion on 5/4/1995 regarding slowness of the meter and the report of ERDA also was in consonance with the aforesaid report of 5.4.1995. Thus, according to the learned Advocate, it was not permissible for the Electrical Inspector to arrive at a contrary finding in light of his own earlier report which was more or less upheld by ERDA, as an independent expert body. It was also contended in the alternative that the matter should be remanded either to the Electrical Inspector or to the

appellate authority as they had failed to take into consideration this aspect of the matter viz. the earlier report of 5/4/1955 and the opinion of ERDA dated 15.6.1995 which were in favour of the petitioner.

9 Mr.A.S.Vakil, appearing on behalf of respondent no.5 submitted that the petition had been admitted on the basis of incorrect representation of facts. It was pointed out by him that the petitioner had averred in the petition to the effect that the Electrical Inspector who had rendered his report on 5.4.1995 had been transferred out of Nadiad and subsequently another incumbent had given a contrary report on 26.2.1996 when factually it was not true. Mr.Vakil also raised preliminary contention to the effect that the petition was barred by delay and laches. Elaborating on this submission he contended that the order of appellate authority was dated 24.11.2000, while the petition had been filed on 30.11.2001, and no reasons whatsoever were advanced for filing petition at such a belated stage.

10. Mr.Majmudar in rejoinder has submitted that the petitioner Board was informed about the impugned order at a belated stage and the petition could not be filed immediately. He therefore, urged that in case of any delay the Court may be pleased to condone the same.

11. In relation to contention regarding the transfer of Electrical Inspector and the succeeding incumbent tendered a separate report, it was submitted by Mr.Majmudar that the matter may be decided without entering into the said controversy because the said aspect had been incorporated in the petition on the basis of instructions received by him.

12. Mr.Premal Joshi, learned A.G.P. appearing on behalf of respondent nos. 1 to 4 stated that the records reveal and he has instruction to state that the Electrical Inspector was never transferred out of Nadiad and it was the same person who had passed the two reports, first one dated 5.4.1995 and the second one dated 26.2.1996.

13. It is settled law that this Court in exercise of its extraordinary jurisdiction is not empowered to enter into realm of appreciation of evidence. Even if on reappreciation of the same evidence in light of the facts and circumstances available on record, it may be possible for the Court to arrive at a different conclusion, it is not permissible in law.

14. In light of the aforesaid salutary principle, if the impugned order dated 24.11.2000 of the appellate authority is taken into consideration, no infirmity can be found in the said order. It is not a case where the appellate authority has either not heard any of the aggrieved parties, or taken into consideration the material which was not available on record when the Electrical Inspector passed an order on 26.2.1996 or omitted to take into consideration the material which was available with the Electrical Inspector when he passed the order dated 26.2.1996. In these circumstances, it is not possible for this Court to interfere with the order of the appellate authority and state that the report of Electrical Inspector dated 26.2.1996 should have been held to be bad in law by the said appellate authority.

15. In relation to the aspect of delay in filing the petition no explanation has come on record. To the contrary, as can be seen from Annexure "E" which is communication dated 29.10.2001 from the Electrical Inspector's office to the Executive Engineer of the petitioner Board was intimated about the order of the appellate authority as early as 4.12.2000. In fact, thereafter there were reminders on 12.2.2001, 16.5.2001, 28.2.2001, 6.8.2001 and 20.10.2001. In these circumstances, the contention of the learned Advocate that impugned order of the appellate authority had been communicated belatedly cannot be accepted. The petition is therefore also liable to be dismissed on the ground of unexplained delay and laches.

16. The petitioner has made a categorical averment in the petition in para 3.3 to the effect that Electrical Inspector, Nadiad who had carried out the test and recorded his opinion on 5.4.1995 and also decided to send the meter for further checking with ERDA had been transferred and another Electrical Inspector had been posted at Nadiad. It is further averred that so called second Electrical Inspector was merely required to declare the results of ERDA and it was not permissible for him to render any fresh report. This para has been affirmed on oath by stating that the same is true to the knowledge, information and belief of the deponent who is stated to be an Executive Engineer of the petitioner Board. The facts which have already come on record by way of affidavit in reply of respondent no.5 and the statement on behalf of respondent nos. 1 to 4 go to show that this averment on oath is factually incorrect. There was no transfer of the Electrical Inspector and this fact is further borne out in as much as the petitioner has conveniently not stated the name of Electrical Inspector

who rendered his report on 5.4.1995 as well as 26.2.1996; in case the said two persons were different it would have been very easy to place the names of gentlemen along with transfer order if it was factually correct. Be that as it may, it is apparent that the petitioner Board has taken contention which is, if not false, incorrect and admittedly this was one of the reasons which may have prompted the Court to issue Notice when the matter first came up for hearing. The petition therefore deserves to be dismissed also on the ground of suppression of correct facts.

17. There is one more aspect of the matter. The petitioner has contended that the report dated 5.4.1995 of the Electrical Inspector and/or opinion dated 15.6.1995 rendered by ERDA was required to be adopted by the Electrical Inspector and he could not have tendered an independent report on 26.2.1996. No provision in law has been pointed out in support of this proposition. The petitioner has been heard by the Electrical Inspector and the Appellate Authority. No such contention has been raised. It is not even the case of the petitioner that such a contention was raised before the said authorities and has not been dealt with by the said authorities. Thus, this contention does not merit acceptance. Even otherwise, once a fresh report is tendered on 26.2.1996 the entire report of 5.4.1995 does not survive and the opinion of 15.6.1995 would merge in this subsequent report dated 24.2.1996. Infact this is how the parties have proceeded all throughout.

18. It is hereby directed that that the respondent Board shall immediately compute the amount which the petitioner would be entitled in light of the order of Electrical Inspector dated 26.2.1996 which has been confirmed by the appellate authority and pay the same to the petitioner by way of Account Payee Cheque with interest @ 9% from the date the amount was paid by the petitioner i.e. 1.6.1995. In case the said amount is not paid within a period of four week from today the petitioner shall be liable to pay the said amount with interest @ 18%.

19. In light of what is stated hereinbefore the petition is rejected. Rule discharged. The petitioner Board shall pay the costs which are quantified at Rs.15,000/- to respondent No.5.

CIVIL APPLICATION No. 4696 OF 2002.

20. In light of the order passed in the main

petition, this Civil Application does not survive.
Disposed off accordingly.

(D.A.Mehta, J)

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